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UNCLAS SECTION 01 OF 04 OTTAWA 001543

SIPDIS

STATE FOR EB/IFD/OIA (NEFIRD), L/CID (GLEHNER), AND WHA/CA
TREASURY FOR OASIA/IMI - HARLOW, MATHIEU, AND ITI
DEPARTMENT PASS USTR

E.O. 12958: N/A

TAGS: EINV EFIN PGOV KIDE CA

SUBJECT: 2003 REPORT ON INVESTMENT DISPUTES AND

EXPROPRIATION CLAIMS: CANADA

REF: A. STATE 83098

B. 02 OTTAWA 1466

11. Mission Canada has updated the non-NAFTA investment disputes (Claimants B, F, and H) and will e-mail the text as requested in ref A. We have not updated the NAFTA Chapter 11 disputes being handled by L/CID (Claimants A, C, D, E, and G). We are not aware of any new investor-state disputes this past year.

12. Begin updated text:

CANADA

The United States Government is aware of eight (8) claims of U.S. persons that may be outstanding against the Government of Canada.

11. a) Claimant A
b) 1995

c) In response to a price increase by Claimant A in charges to landfill customers in Quebec, more than 20 municipalities formed the La Mauricie Intermunicipal Waste Management Authority (REGIE) to take control of the landfill. Claimant A appealed a January 1995 preliminary indemnity order for \$7.5 million (Canadian dollars), but the REGIE took possession on May 1, 1995 and the \$7.5 million was paid. The claimant was dissatisfied with this amount, and Quebec Indemnity Court proceedings began in December 1995. On December 21, 1998, the Quebec Court Expropriation Chamber awarded Claimant A C\$24 million. The Regie appealed this ruling to the Quebec Court of Appeals in 1999. Claimant's legal counsel informs the Embassy that the Claimant prefers to pursue legal remedies through the Quebec courts. Prior to the court decision of 1998, the U.S. Ambassador to Canada, at Claimant's request, wrote Quebec provincial officials urging resolution of the dispute. The Quebec Court of Appeals will not hear the case until

fall 2002 or winter 2003. Claimant A would negotiate an out-of-court settlement, and is passing this message through provincial political authorities, but would insist on a reasonable sum. Since waste management companies and municipal authorities in Quebec collaborate and compete, the claimant says he will continue the suit in court because of the precedent it may set. Interest on the 1998 award of C\$24 million has increased the sum to C\$30 million.

12. a) Claimant B
b) 1993

c) The property in question is an undeveloped 2.29 acre plot of land, including 220 feet of beachfront on Kingsburg beach in Nova Scotia. The legal owner of the property is a Nova Scotia Corporation owned by Claimant B that acquired the property on March 3, 1993. On March 9, 1993, the provincial Ministry of Natural Resources declared Kingsburg beach and its dune system "protected" under the Nova Scotia Beaches Protection Act. This designation prohibited development of the property, and Claimant B contends the designation has reduced the value of the property to zero, and amounts to a taking of the property without compensation. Claimant B has not provided the U.S. Government with an estimate of the property's value.

Claimant B is one of several landowners affected by the designation that has not resolved his dispute. Claimant B is prohibited from building on his property because, unlike other landowners that have been permitted to build, he did not have required permits in place at the time of the designation.

In June 1998, the provincial Supreme Court of Nova Scotia ruled in favor of Claimant B. The Crown appealed that decision, however. A court hearing date was held in May 1999, and on August 18, 1999, the Nova Scotia Court of Appeals handed down its decision allowing the appeal and dismissing Claimant B's action. Claimant was advised by the Court to offer the provincial government a new proposal for a development permit that would meet environmental objections.

A new proposal was submitted in 2000, but the Nova Scotia Ministry of Natural Resources, responding in 2001, did not concur with the conclusions of the environmental study and request for construction permit submitted by Claimant B.

At the Claimant's request, Consulate Halifax arranged a meeting for the Claimant's representative with the provincial Minister of Natural Resources. At the meeting, in October, 2002, the Minister conceded that the Ministry's past approach did seem unfair as it did not provide clear guidance to landowners. He stated that he would request a follow-up study/report from the environmental consulting firm that produced the original study and recommendations for protection of the beach, with specific guidelines as to what type of construction and land use should be permitted. This would provide landowners with a benchmark when submitting development plans to the Ministry of Natural Resources.

13. a) Claimant C
b) 1991

c) In 1990 Claimant C formed a joint venture with a British Columbia (BC) company to export water from BC streams by tanker ship to California. According to Claimant C, the BC Government promised the firm, orally and in writing, that it could obtain the license required under the BC Water Act for the purpose of export by tanker. On March 14, 1991, the Goleta Water District in the Santa Barbara area announced that Claimant C and its Canadian partner had won the contract to supply fresh water, in a competition that also included three BC firms. On March 18, 1991, the BC Government imposed a moratorium on new bulk water licenses, saying it had to review its policies; the moratorium was later extended indefinitely. In 1995, the BC Government enacted a Water Protection Act that banned water export by tanker ship.

In January 1993, Claimant C and its partner began litigation, and in July 1995, the BC Government asked the two companies to submit claims for a negotiated settlement. The claim of the Canadian Partner was settled by a cash payment in July 1996. According to Claimant C, the BC Government has refused to negotiate a settlement with it, and Claimant continued to pursue litigation against the BC government until 1999. In December 1998, Claimant C filed notice of intent to pursue compensation under NAFTA Chapter 11 provisions.

In April and May 1999, Claimant C consulted with Canadian government officials but was unable to arrive at a resolution. In October 1999, Claimant C filed documents requesting arbitration under Chapter 11. However, the Canadian government officials found these documents lacked certain required features that permit the Government of Canada to organize Chapter 11 arbitration, and requested that Claimant C resubmit them. Claimant C resubmitted these documents in May 2000, but the government of Canada has not been satisfied that the requirements to initiate Chapter 11 arbitration proceedings have been fulfilled.

Estimates of value vary. Claimant C's Canadian partner reportedly sued for less than \$1 million (Canadian Dollars) and settled for \$335,000 (Canadian). In 1998, Claimant C assessed its damages at between \$400 and \$500 million. When filing its claim for arbitration in 1999, Claimant C assessed its "temporary lost business opportunity" at \$1.5 billion and, in the alternative, damages for permanent lost business at \$10.5 billion.

The Embassy in Ottawa and Consulate in Vancouver have been in contact sporadically with Claimant C, and the Government of Canada is aware of USG interest in the case. In keeping with NAFTA Chapter 11 procedures, however, the Embassy does not take an active role on behalf of Claimant C while consultations and dispute resolution measures are proceeding.

14. a) Claimant D
b) 1998

c) In 1995, Claimant D solicited contracts with Canadian companies to provide processing, transportation and disposal of old electric transformers, which contain significant quantities of PCB waste. Later that year, the Government of Canada announced a ban on the export of PCB waste. Because Claimant D proposed to treat the Canadian waste in the U.S., Claimant D believes the export ban imposed a material loss to the company. The Canadian ban on PCB waste was in place until February 1997, when Canada adopted new regulations permitting exports of PCB waste to the U.S. In July 1997, the U.S. closed its border to imports of PCB waste. On July 22, 1998, Claimant D announced it would seek compensation from the Government of Canada under NAFTA Chapter 11. Claimant D requested \$20 million in compensation for business lost due to the over one-year PCB export ban.

This dispute became a NAFTA Chapter 11 arbitration claim when Claimant D filed with the Canadian Government on October 30, 1998. The Embassy continues to monitor the case, but does not intervene with Canadian authorities while Chapter 11

dispute resolution measures are proceeding. In November 2000, the tribunal rendered a partial award denying claimant's expropriation claim, but finding that Canada had breached its obligations under the NAFTA's national treatment and minimum standard of treatment provisions. A hearing on damages was held in September 2001. The tribunal has not yet issued its decision on damages. Canada has petitioned the federal court in Ottawa to set aside the arbitral award.

15. a) Claimant E
b) 1998

c) Claimant E owns and operates lumber operations in British Columbia. In December 1998, Claimant E announced it intended to file under NAFTA Chapter 11 provisions for compensation from the Government of Canada. Claimant E believes Canada breached its NAFTA national-treatment obligations through its implementation of the Bilateral Softwood Lumber Agreement, which governs the export of softwood lumber manufactured in the provinces of British Columbia, Alberta, Ontario, and Quebec to the United States. The agreement imposed an export levy once a given quota of lumber has been reached. Claimant E alleges that the Government of Canada acted in a manner inconsistent with its NAFTA national-treatment obligations because it distinguishes between investors in the four "listed" provinces in the Softwood Lumber Agreement versus investors in the non-listed provinces, and treated investors in Quebec more favorably than investors in the other listed provinces. Claimant E also alleges that Canada failed to accord it the international minimum standard of treatment.

In March 1999, this dispute became a NAFTA Chapter 11 arbitration claim when Claimant E officially filed a claim with the Canadian government, seeking \$382 million in compensation for damages it claims it suffered. The Tribunal proceeding rejected two of Claimant E's allegations relating to expropriation and performance requirements in June 2000, and in April 2001 the tribunal rejected much of the national treatment and minimum standard of treatment claims.

On May 31, 2002, the Tribunal issued an award on damages with respect to Claimant E's minimum standard of treatment claim. The Tribunal ordered Canada to pay Claimant E U.S. \$461,566, with interest payable from and after May 31, 2002 at the rate of 5% per annum compounded quarterly and pro rata within a quarter. Further proceedings are being held on questions as to costs.

Claimant E has not consulted with the U.S. Embassy or the U.S. Consulate in Vancouver. In keeping with USG policy, the Embassy continues to monitor the case, but does not intervene with Canadian authorities while Chapter 11 dispute resolution measures are proceeding.

16. a) Claimant F
b) 1995

c) Claimant F purchased in good faith a 32 acre parcel of land on Prince Edward Island in 1995. After the purchase, a local resident successfully argued in court that he had title to the land under the principle of adverse possession, or "squatters' rights." In January 1999, the provincial Supreme Court of Prince Edward Island ruled against Claimant F. Claimant F believes this decision constitutes a taking of his land by government decision. Claimant F said he would appeal the decision through the court system with a locally-hired attorney. Claimant F has not provided the U.S. Government with an estimated value of the claim. U.S. Consulate personnel have not heard from Claimant F since, 1999, and attempts to contact him have been unsuccessful.

17. a) Claimant G
b) 2000

c) Claimant G operates an express courier delivery service worldwide, and asserts that the Government of Canada has allowed the Canadian Post system monopoly unfair advantages in its competition with private sector service providers. These advantages, Claimant G believes, take the form of monetary subsidies from non-courier services Canada Post provides, and discriminatory treatment by Canada customs. Claimant G has filed for arbitration alleging the Government of Canada breached its commitments under articles 1102, 1105, and 1502 of the NAFTA.

Attorneys for Claimant G have briefed the Ambassador on their claim, and are in periodic communication with Embassy staff. They have let the Canadian government know that they are not averse to a non-judicial settlement of the claim through negotiations. The Claimant has not put a sum on the amount of damages it claims due to Canadian government actions.

In keeping with USG policy, the Embassy continues to monitor the case, but does not intervene with Canadian authorities

while Chapter 11 dispute resolution measures are proceeding.

18. a) Claimant H
b) 1999

c) Claimant H says he invested US\$600,000 in prospecting for diamonds at a site 100 miles north of Yellowknife, Northwest Territories. In early 1999 Claimant H says he requested the provincial Mining Recorders Office in Yellowknife to "void" a claim of a competing prospector because they "overstaked" on his property. An official of the Recorders Office claims that the Claimant had exceeded his land use threshold, and had not applied for a land use permit. Claimant was arrested as a squatter in February, 1999, detained two weeks, and deported to the United States for overstaying. Provincial Mining office says Claimant made threats on the staff of the office. In August 1999 the property of Claimant H was returned to him through Canada Customs.

In July 2001 Claimant H sent a letter to the Embassy noting his claim, and in December 2001 he retransmitted the same information, also alleging that civic authorities conspired to kill him to prevent his claim to discovery and ownership of mineral deposits. Claimant H contacted the Department in May, 2003 to let us know he is running for Congress and to refer us to his web site that features details of his claim.

Claimant A: NAFTA Chpt 11 - USA Waste (formerly Waste Management). Claimant's attorney does not believe it has signed a privacy act waiver.

Claimant B: William Hamilton, a private U.S. citizen who has not signed a privacy act waiver.

Claimant C: NAFTA Chapter 11- Sunbelt Water, Inc., Santa Barbara, CA. Has not signed privacy act waiver.

Claimant D: NAFTA Chapter 11 - SD Myers Company, Tallmadge, Ohio. Has not signed privacy act waiver to Embassy's knowledge.

Claimant E: NAFTA Chapter 11 - Pope and Talbott, Portland, Oregon. Has not signed privacy act waiver to Embassy's knowledge.

Claimant F: David Johnson, a private U.S. citizen. Has not signed a privacy act waiver.

Claimant G: NAFTA Chapter 11 - United Parcel Service, Atlanta, Georgia. Has not signed privacy act waiver to Embassy's knowledge.

Claimant H: Robert Curtis, a private U.S. citizen. Gave a full verbal privacy act waiver to Consulate officials in 1999. His web site is Curtisforcongress.com.

End updated text.
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